



DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Farm Service Agency

[Docket ID FSA-2023-0004]

Notice of Funds Availability (NOFA) for the Organic Dairy Marketing Assistance Program

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Notice.

SUMMARY: The Farm Service Agency (FSA), on behalf of the Commodity Credit Corporation (CCC), is announcing the availability of marketing assistance funding to organic dairy operations in the United States. Eligible Organic Dairy Marketing Assistance Program (ODMAP) participants will receive a one-time payment to assist with projected marketing costs for 2023, calculated based on a cost share of marketing costs on the pounds of organic milk marketed for the 2022 calendar year (or a projection of 2023 pounds of organic milk marketed if warranted in certain situations supported by documentation), not to exceed 5 million pounds per operation to target smaller organic dairy operations. ODMAP payments will assist organic dairy producers in expanding the market for organic dairy and increasing the consumption of organic dairy, through the continued marketing of organic dairy, as these operations face a variety of marketing challenges and input cost increases and supply chain-related shortages.

DATES: *Applications Due Date:* We will accept applications through July 26, 2023.

FOR FURTHER INFORMATION CONTACT: Douglas Kilgore, (202) 748-2434, douglas.e.kilgore@usda.gov. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

Over the past several years, organic dairy farms have faced—and continue to face—a variety of challenges, and many are struggling to remain in business. Notably, organic dairy operations have limited ability to pass along cost increases to retailers or consumers without a decrease in domestic consumption of organic dairy and the cost increases have, in many cases, eliminated profit margins, especially among smaller operations that do not have the ability to take advantage of economies of scale. Marketing and operational challenges may result in decisions to cease operations entirely without intervention, which will reduce the organic dairy market. Organic grain and forage commodities have traditionally been relatively small markets where the domestic U.S. demand for organic feed has outstripped supply, resulting in the need for imports. Input costs and availability, especially feed, have seen several years of sustained increases and volatility due to a variety of factors including drought in major forage production regions in the United States, and transportation and trade challenges both in general post-pandemic and specific to the disruptions caused by the invasion of Ukraine, which has traditionally been one of the major organic global feed suppliers.

In addition to these input costs and challenges, organic dairy farmers also have seen higher delivery and marketing costs, especially those related to transportation and hauling. As part of the system through which all dairy farmers provide milk and dairy products to consumers, dairies bear the costs of milk hauling and other marketing costs. These marketing costs for organic dairies, however, can be significantly greater than the conventional market. In addition, participants in the organic dairy sector must take additional steps to keep the organic milk separated and its status as organic clearly preserved. In some cases, these requirements necessitate longer and more costly hauling routes, including the costs of finding truck drivers willing to cover longer routes with multiple stops. The recent shortage of truck drivers in

general and specifically those with the experience and training to operate tanker trucks exacerbates these challenges further.

Organic dairy operations also tend to be smaller farms than conventional dairy operations, which means they often have less production to spread the various fixed costs over or have higher per unit costs. Therefore, they may not benefit from the same economies of scale as conventional dairies. In particular, milk pick-up and hauling costs may be a challenge due to the need to have dedicated organic pick-up routes that need to stop at multiple farms or use smaller tankers.

ODMAP will provide assistance to organic dairy operations that produce milk from cows as well as organic dairy operations that produce milk from goat and sheep. All three types of organic dairy operations are eligible, since all three types of operations face the same challenges related to organic marketing and generally follow similar business and marketing models such as pooling milk through cooperatives or selling directly to milk processors that make dairy products such as cheese. While there are fewer, and therefore less data available on, organic dairy operations that produce milk from goats and sheep compared to cows, the impact of increased marketing costs to the consumption of organic dairy remains constant across all three.

Data to estimate the marketing costs for all species relies on conventional cow milk estimates, since more specific national organic cow, sheep, or goat estimates are not available. Given the unique marketing challenges and strategies for organic dairy operations discussed above, these conventional estimates are likely to be conservative and do not reflect the full marketing costs for organic production.

Through ODMAP, USDA is assisting organic dairy operations by providing payments to assist with their projected marketing costs in 2023. The CCC Charter Act (15 U.S.C. 714c(e)) includes authority for CCC to use its general powers and funding to increase the domestic consumption of agricultural commodities (other than tobacco) by expanding or aiding in the expansion of domestic markets or by developing or aiding in the development of new and

additional markets, marketing facilities, and uses for such commodities. USDA is providing this marketing assistance to organic dairy producers to help keep these small organic dairies in operation by aiding in the expansion of the domestic market for organic dairy, which will increase domestic consumption of organic dairy, in order to counteract the currently projected reduction in this market. Without the assistance, it is projected that organic dairies, and particularly small organic dairies, may cease or decrease organic dairy production and reduce the domestic supply and consumption of organic milk.

FSA designed ODMAP to leverage a simplified, streamlined application process to expedite assistance to certified organic dairy operations that produce organic milk from dairy cows, dairy goats, or dairy sheep. ODMAP provides one-time assistance for a cost share of projected marketing costs for eligible organic dairies for 2023, not to exceed 5 million pounds per operation to target smaller organic dairy operations, in order to provide support to aid or expand the market for organic dairy operations during 2023. All organic dairy operations that apply for ODMAP will be required to provide their USDA certification of organic status, confirming their operation as an organic dairy operation at the time of application. In order to calculate projected marketing costs for 2023, the streamlined process will have operations certify to their organic milk production for the 2022 calendar year, that was marketed directly as organic milk or indirectly through organic dairy products or a projection of pounds of organic milk marketed in 2023 if warranted due to changes in circumstances between 2022 and 2023 supported by documentation as discussed further below. While production documentation for 2022 production is not required at the time of application, operations should retain supporting documentation and calculations for 3 years should they be selected for a spot check.

FSA will administer ODMAP on behalf of CCC, using CCC funds. The payment may be issued in 2 parts.

There is \$104 million from CCC funds available for ODMAP assistance. ODMAP payments will be subject to availability of funding. FSA will make an initial payment to eligible

applicants factored by 75 percent. If sufficient available funding remains at the conclusion of the application period, an additional payment of up to the remaining 25 percent may be made to each eligible applicant if USDA determines that additional assistance is still needed.

The funds announced in this NOFA are not subject to sequestration.

Average Milk Marketing Cost

The only available estimates to calculate an average milk marketing cost are from milk marketed through the Federal Milk Marketing Orders (FMMO), which is primarily conventional cow milk. There are no national-level data sets on milk marketing and hauling costs specific to organic sheep or goat operations. While an estimated average milk marketing cost from FMMO is likely conservative given the likely higher per unit costs for smaller operations that are more common for organic production, and the unique marketing challenges facing organic dairy operations, the similarities in marketing options and costs between conventional and organic make it the best proxy available.

To develop the ODMAP payment rate, FSA worked with the Agricultural Marketing Service (AMS) to determine an average marketing cost per hundredweight, using the AMS data from the FMMO regional model documentation (<https://www.ams.usda.gov/sites/default/files/media/FinalDecisionEconometricModelDocumentation.pdf>), which estimates the relationship between each FMMO uniform milk price and the National Agriculture Statistics Service (NASS) all-milk price.

Through this comparison of the milk prices, the model estimates the milk marketing and hauling fees that are deducted in the net producer milk marketing statements (producer paychecks).

Averaging these estimates of milk marketing costs among orders results in an average of \$1.10 per hundredweight for 2022, which will be used as the ODMAP average milk marketing cost to calculate assistance.

Eligibility

To be an eligible ODMAP applicant, the organic dairy operation must produce and market organic milk from cows, goats, or sheep at the time of application, provide their USDA Certification of organic status for 2023, and have documentation to support any certified projection of 2023 pounds of organic milk marketed.

To be eligible for ODMAP assistance each applicant must:

- (1) Submit a FSA-630 application and any additional required documentation as specified in the Application Process section below; and
- (2) Comply with all provisions of this NOFA and comply with the following regulations:
 - 7 CFR part 12—Highly Erodible Land and Wetland Conservation;
 - 7 CFR 718.6, Controlled Substance; and
 - 7 CFR part 707—Payments Due Persons Who Have Died, Disappeared, or Have Been declared Incompetent, if applicable.

In addition, consistent with other FSA assistance programs, a producer must be a:

- Citizen of the United States;
- Resident alien, which for purposes of ODMAP means “lawful alien” as defined in 7 CFR 1400.3;
- Partnership consisting solely of citizens of the United States or resident aliens; or
- Corporation, limited liability company, or other organizational structure organized under State law consisting solely of citizens of the United States or resident aliens.

Federal, State, and local governments are not eligible for ODMAP payments.

Payment Rates and Calculations

The ODMAP initial payment will be calculated by using the producer-certified pounds of organic milk projected to be marketed in 2023, multiplied by the \$1.10 per cwt ODMAP payment rate, multiplied by a factor of 75 percent. The pounds of organic milk projected to be

marketed in 2023 will be (i) the self-certified organic milk production marketed directly by the operation in 2022 or used as inputs in related-organic dairy products marketed in 2022, that can be supported by documentation maintained in the ordinary course of business, or (ii) if approved by the Deputy Administrator for Farm Programs (Deputy Administrator), an operation-specific certified estimate of organic milk projected to be marketed in 2023 that is supported by documentation maintained in the ordinary course of business from the applicant.

Operations that (a) transitioned to organic in 2022 or 2023, (b) are new organic operations in 2022 or 2023, or (c) have increased organic milk production capacity by 15 percent or greater in 2023 as compared to 2022, may request to use a certified estimate of their operation's reasonably projected organic milk to be marketed in 2023 based on average daily organic production of current herd that can be supported by documentation maintained in the ordinary course of business, including, but not limited to, milk marketing statements, milk production records, contemporaneous records, or similar supporting documentation, as may be requested by the Deputy Administrator. These operations must provide an explanation of the basis for their 2023 projection on the FSA-630 and how those projections are supported by the supporting documentation they submit with the application. All organic dairy operations making such a request must submit with their application all available 2023 milk marketing statements, in addition to all other documentation necessary to support their certification. Organic dairy operations should contact their local FSA Service Center if they have questions regarding their particular circumstances and the documentation necessary to support such a request. The request will be evaluated by the Deputy Administrator at the Deputy Administrator's discretion to assess whether the estimate is adequately supported by documentation and reasonable based on the documented average daily production of the current organic herd.

The initial payments will be made to eligible applicants on a rolling basis as applications are submitted and approved. If funds remain at the conclusion of the application period, a second payment to eligible applicants of up to the remaining 25 percent may be issued subject to

available funding and a determination by FSA of the need for additional marketing assistance based on discussions with USDA experts and economists, industry, and stakeholders regarding impact of initial marketing assistance on domestic consumption of organic dairy.

Organic dairy operations are only eligible for payment on up to 5 million pounds of organic milk.

Application Process

FSA will make available to organic dairy operations form FSA-630 to apply for assistance for pounds of organic milk projected to be marketed in 2023. FSA will accept applications from May 24, 2023, through July 26, 2023. To apply for ODMAP assistance, all applicants must submit a completed form FSA-630 and all other required documentation to their administrative FSA county office by July 17, 2023.

Applicants must submit the following forms, if not already on file, in person or by mail, email, facsimile:

- Form FSA–630, ODMAP Application;
- Manual Form CCC–902–I, Farm Operating Plan for an Individual, as applicable;
- Manual Form CCC–902E, Farm Operating Plan for an Entity, as applicable;
- CCC–901, Member Information for Legal Entities (if applicable);
- AD–1026, Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification; and
- AD–2047, Customer Data Worksheet.

The Deputy Administrator has the discretion and authority to waive or modify filing deadlines and other requirements or program provisions not specified in law, in cases where the Deputy Administrator determines it is equitable to do so and where the Deputy Administrator finds that the lateness or failure to meet such other requirements or program provisions do not adversely affect the operation of ODMAP. Although producers have a right to a decision on whether they filed applications by the deadline or not, producers have no right to a decision in

response to a request to waive or modify deadlines or program provisions. The Deputy Administrator's refusal to exercise discretion on requests to waive or modify ODMAP provisions will not be considered an adverse decision and is, by itself, not appealable.

Evaluation and Approval of Payments

FSA will review each ODMAP application and supporting documentation to determine eligibility. FSA, on behalf of CCC, will approve applications for an ODMAP payment for eligible applicants consistent with the terms specified in this document.

If requested by FSA, the applicant must provide additional supporting documentation to verify the accuracy of information provided on the application. If any supporting documentation is requested, the documentation must be submitted to FSA within 30 calendar days from the request or the application will be disapproved by FSA, and, if payment has been made, full ODMAP payment will be required to be refunded to FSA with interest from the date of disbursement. ODMAP is subject to the availability of funding and will be funded in the order in which applications are approved. If additional funding is allocated to ODMAP after initial funding is depleted, additional applications will be reviewed, approved and funded, if the eligibility criteria is met, in the order received during the application period, subject to the availability of those additional funds.

An initial ODMAP payment will be issued after an application is approved. At the conclusion of signup, a second payment may be issued to eligible applicants.

Provisions Requiring Refund to FSA

In the event any ODMAP payment resulted from erroneous information or a miscalculation, the payment will be recalculated, and the participant must refund any excess payment to FSA with interest to be calculated from the date of the disbursement to the participant. If, for whatever reason, FSA determines that the applicant misrepresented either the reported organic milk production or organic certification or is otherwise ineligible for payment, the application will be disapproved and the full ODMAP payment will be required to be

refunded to FSA with interest from the date of disbursement. ODMAP applications, FSA-630, will be reviewed and spot-checked by FSA for program eligibility and payment calculation purposes through milk marketing statements or similar supporting documentation. ODMAP participants must retain all ODMAP supporting documentation for 3 years.

The liability of anyone for any penalty or sanction resulting from a ODMAP application, or for any refund to FSA, is in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to: 18 U.S.C. 286, 287, 371, 641, 651, 1001, and 1014; 15 U.S.C. 714; and 31 U.S.C. 3729.

Miscellaneous Provisions

Appeal regulations specified in 7 CFR parts 11 and 780 apply. FSA program requirements and determinations that are not in response to, or result from, an individual disputable set of facts in an individual participant's application for assistance are not matters that can be appealed.

Paperwork Reduction Act Requirements

In compliance with the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the information collection request has been approved by OMB under the control number of 0503-0028. FSA will collect the information from the organic dairy operations to qualify for the ODMAP payment. ODMAP provides one-time funding as described in this NOFA.

Environmental Review

The environmental impacts have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA (7 CFR part 799).

The purpose of ODMAP is to provide marketing assistance funding to organic dairy operations in the United States to increase the domestic consumption of organic milk and organic milk products by aiding in the expansion of the organic milk market. The limited discretionary

aspects of ODMAP do not have the potential to impact the human environment as they are administrative. Accordingly, these discretionary aspects are covered by the categorical exclusions in 7 CFR 799.31(b)(6)(iii) that applies to price support programs, provided no extraordinary circumstances are found to exist. As such, the implementation of ODMAP and the participation in ODMAP do not constitute major Federal actions that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, FSA will not prepare an environmental assessment or environmental impact statement for this action and this document serves as documentation of the programmatic environmental compliance decision for this federal action.

Federal Assistance Programs

The title and number of the Federal assistance programs, as found in the Assistance Listing, to which this document applies is 10.977, Organic Dairy Marketing Assistance Program (ODMAP).

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotope, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users

can initiate this call from any telephone). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or email: OAC@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

Zach Ducheneaux,
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Farm Service Agency, and
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Commodity Credit Corporation.

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